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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/915,727	07/26/2001	Ralph J. Locke	CNI-100-C	8203

7590 05/25/2004

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EXAMINER	
FULLER, ERIC B	

ART UNIT	PAPER NUMBER
1762	

DATE MAILED: 05/25/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	09/915,727	LOCKE ET AL.
	Examiner	Art Unit
	Eric B Fuller	1762

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *07 May 2004*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-7,9-11 and 13-47* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-7,9-11 and 13-47* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on April 4, 2004 has been entered.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-7, 9-11, 13-20, 22-29, and 33-47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Primeaux, II et al. (US 5,962,618) in view of Langeman (US 6,025,045).

Primeaux teaches an elastomer coating material for use on a substrate. The coating material comprises an amine-terminated polyether polyol (column 4, lines 43-45) having a molecular weight greater than about 1500 and an amine equivalent weight greater than about 750 (column 4, lines 43-52) and an isocyanate compound (column 3,

line 16). When mixed, these materials react to form a polyurea and cures substantially instantaneously (column 10, lines 13-28). The materials are mixed such that predetermined tensile strength, hardness, and flexibility are achieved (column 2, lines 49-67). Since this reference is applying the material to a large substrate such as a rail car and no means are taken to heat or cool the car, this reference reads on applying the material to the substrate at ambient temperatures and pressures. The flexibility of the coating reads on attenuating vibration (column 2, lines 35-40). Additionally, since the coating taught by Primeaux is the same as the coating claimed by the applicant, it would be inherent that the coating of Primeaux would act to attenuate vibration, noise, and harshness. The reference fails to explicitly teach that the coating is applied to at least one body component of an automobile passenger vehicle.

However, Langeman teaches that spray-on truck bed liners require abrasion and impact resistance for loading and loading cargo (column 2, lines 8-46). It would have been obvious at the time the invention was made to a person having ordinary skill in the art to use the composition taught by Primeaux as the spray-on bed liner taught by Langeman. By doing so, one would have a reasonable expectation of success as Primeaux teaches that the coating provides impact resistance for loading and unloading of cargo and Langeman teaches that spray-on bed liners require such characteristics. The coating of Primeaux reads on the applicant's claimed coating, as shown in the previous Office Action. The truck bed of Langeman reads the substrate of the applicant's claims.

Claims 1-7, 9-11, 13-20, and 22-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jackie et al. (US 4,144,820) in view of Primeaux, II et al. (US 5,962,618).

Jackie teaches railcars for loading and unloading cargo with components that are made of fiberglass (column 2, lines 22-30). The reference is silent in teaching a protective coating.

Primeaux teaches an elastomer coating material for use in providing an impact and abrasion resistant coating for railcars that undergo loading and unloading of cargo (column 15, lines 3-15). The coating can withstand the flexing the railcar incurs during travel. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to use the protective coating taught by Primeaux in the railcar taught by Jackie. By doing so, one would reap the benefits of the railcar being impact and abrasion resistant. The coating of Primeaux reads on the applicant's limitations as shown above and in the previous Office Action.

Claims 21 and 30-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Primeaux, II et al. (US 5,962,618) in view of Langeman (US 6,025,045), as applied to claims 20 and 25 above, and further in view of Barron et al. (US 5,525,681).

Primeaux, in view of Langeman, teaches the limitations of claims 20 and 25, as shown above, but fails to explicitly teach the filler being fibers. However, Barron teaches that polyurea compositions are reinforced with glass fibers (column 10, lines 35-43). It would have been obvious at the time the invention was made to a person

having ordinary skill in the art to use glass fibers as a filler in the process taught by Primeaux, in view of Langeman. By doing so, one would reap the benefits of the composition being reinforced.

Claims 21 and 30-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jackie et al. (US 4,144,820) in view of Primeaux, II et al. (US 5,962,618), as applied to claims 20 and 25 above, and further in view of Barron et al. (US 5,525,681).

Jackie, in view of Primeaux, teaches the limitations of claims 20 and 25, as shown above, but fails to explicitly teach the filler being fibers. However, Barron teaches that polyurea compositions are reinforced with glass fibers (column 10, lines 35-43). It would have been obvious at the time the invention was made to a person having ordinary skill in the art to use glass fibers as a filler in the process taught by Jackie, in view of Primeaux. By doing so, one would reap the benefits of the composition being reinforced.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington,* 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-7, 9-11, 13-47 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-29 of U.S. Patent No. 6,291,019 B1. Although the conflicting claims are not identical, they are not patentably distinct from each other because all the limitations presented in the present claims are met by the claims of the patent. The differences are obvious variants of one another.

Response to Arguments

Applicant argues that Primeaux fails to teach or make obvious all the limitations of the claims, as they have now been amended. Examiner agrees and has withdrawn the rejections accordingly. Applicant's arguments are moot in view of the new grounds of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eric B Fuller whose telephone number is (571) 272-1420. The examiner can normally be reached on Mondays through Thursdays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Shrive P Beck, can be reached on (571) 272-1415. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

EBF

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